

DOCKET FILE COPY ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

FCC 04M-28

03678

DISPATCH

In the Matter of	)	EB Docket No. 04-381
	)	
Florida Cable Telecommunications	)	
Association, Inc.; Comcast Cablevision of	)	
Panama City, Inc.; Mediacom Southeast,	)	
L.L.C.; and Cox Communications Gulf,	)	
L.L.C.,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
Gulf Power Company,	)	
	)	
Respondent.	)	

## PREHEARING ORDER

Issued: September 30, 2004

Released: October 1, 2004

## Prehearing Conference

The first Prehearing Conference is set for **November 9, 2004, at 9:30 a.m.** in OALJ Hearing Room A (TW A-363).<sup>1</sup> See Order FCC 04M-26, released September 30, 2004.

The issue set for adjudication is to determine:

Whether Gulf Power is entitled to receive compensation above marginal cost for any attachments to its poles belonging to the Cable Operators and if so, the amount of any such compensation.

*Hearing Designation Order*, EB Docket No. 04-381 (DA 04-3048), released September 27, 2004 ("HDO"), Para. 11.

<sup>1</sup> Hearing Room (TW A-363) and Witness Room (TW A-461) will be opened at 8:30 a.m.

In addition to filing with the Commission Secretary, the parties should utilize e-mail and/or fax for courtesy service of motions, pleadings and correspondence.<sup>2</sup> Courtesy copies sent to the Presiding Judge by e-mail must include the same e-mail to the Legal Technician (Shiela.Parker@fcc.gov).

### **Burden of Proof**

Respondent requests a full evidentiary hearing to prove that “an alternative cost methodology” should be applied – and not the “Cable Formula” – in deciding an appropriate pole attachment rate in this particular case. The burdens of proof and production on the issue have been assigned to the Respondent. *HDO* at III. C.

### **Confidentiality**

Before document production and depositions, Complainants and Respondent may submit a proposed *Confidentiality Order*, concurred in by the Bureau. *See* 47 C.F.R. § 0.459(b) (must show information is commercial, financial, trade secret, or privileged, and that competitive harm would result from disclosure). Confidentiality under such order will apply only to discovery.

### **Documents Claimed Privileged**

Upon refusal to produce documents for discovery and/or hearing based on a claim of attorney client/work product privilege, a party seeking the documents shall file Motion for In Camera Review. A party withholding production shall provide a list and description, including identity of addressee and person(s) copied, of each document claimed to be privileged and the reason(s). The Presiding Judge will rule whether *in camera* review is required.<sup>3</sup>

### **Alternative Cost Methodology**

**By 2:00 p.m. on November 5, 2004**, Complainants and Respondent shall submit Preliminary Statements on Alternative Cost Methodology, not to exceed twenty-five pages in length.

---

<sup>2</sup> Pleading cycles are controlled by the Commission’s rules. 47 C.F.R. § 1.294. The parties will be presumed to receive e-mailed or hand-delivered copies of a motion or pleading on the date filed with the Commission Secretary. Unless specifically requested, there will be no three days grace for mailing.

<sup>3</sup> *See, Metroplex Communications, Inc.*, 2 FCC Rcd 4513 (Review Bd 1987) for procedures.

## Procedural Schedule

**By 2:00 p.m. on November 5, 2004**, Complainants and Respondent also shall submit a proposed Procedural Schedule<sup>4</sup> providing dates for:

- depositions of testifying experts<sup>5</sup>,
- completion of all discovery,
- exchange of exhibit lists and witness lists<sup>6</sup>,
- exchange of cases in chief (exhibits<sup>7</sup> and written testimony)<sup>8</sup>,
- notification of witnesses for cross-examination,
- submission of hearing subpoenas for signature (if needed),
- final prehearing conference for status report and marking and receipt of documentary evidence,

---

<sup>4</sup> If counsel cannot agree to any part of scheduling and/or discovery, each shall submit **by 12:00 p.m. on November 5, 2004**, a Statement on Discovery and Procedural Dates, not to exceed fifteen pages, stating anticipated discovery needs.

<sup>5</sup> For each expert identified, there will be furnished a current *curriculum vitae*. Discovery of experts shall be conducted under FRCP 26 (b)(4) (trial preparation's experts).

<sup>6</sup> The parties may rely on official notice of relevant FCC and/or FERC documents that are on file, that are equally available, and that will be introduced at the hearing. *See* 47 C.F.R. § 1.362. However, it will be necessary to exchange before hearing copies of all documents for which official notice will be requested.

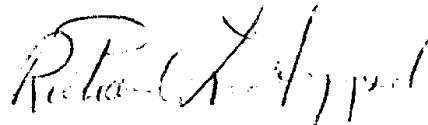
<sup>7</sup> Documents shall be assembled in a binder with each exhibit bearing a number and tab, and with each exhibit separately paginated. Each binder shall be indexed. The exhibits shall be serially numbered for identification beginning with the number 1, preceded by a sponsoring party's prefix (e.g. Comp. Exh. 1; Resp. Exh. 1; EB Exh.1).

<sup>8</sup> Parties should use, whenever possible, written direct testimony of witnesses (e.g. expert witnesses) to be cross-examined at hearing, and/or the use of deposition testimony as evidence. *Cf.* 47 C.F.R. § 1.248(d)(1) (written testimony in certain cases). Also, party depositions may be used by an adverse party "for any purpose." 47 C.F.R. § 1.321(d)(2).

- exchange of trial briefs<sup>9</sup>,
- hearing commencement date.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION<sup>10</sup>

A handwritten signature in dark ink, appearing to read "Richard L. Sippel", is written over a faint, larger version of the same signature.

Richard L. Sippel  
Chief Administrative Law Judge

---

<sup>9</sup> Trial briefs must include: (1) summary of case; (2) proffer of proof on alternative cost methodology; (3) summary of what each witness will prove; (4) description and statement of relevance of documentary evidence; and (5) points and authorities on anticipated evidentiary, procedural and substantive issues, citing only key cases or authorities to support a position.

<sup>10</sup> Courtesy copies of this *Prehearing Order* and subsequent procedural orders will be sent to all counsel by e-mail upon the Legal Technician being advised of appearances.